IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-152

In re CHRISTINA I. CONNORS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OBJECTIONS PRESENTED

1. Petitioner lacks sufficient standing to present this matter before the Court.

2. Petitioner has presented various issues which were not presented to the Supreme Court of Florida in the matter of *Christina I. Connors* 332 So. 2d 336 (Fla. 1976) and therefore those issues should not be considered by this Court.
   (a) The issue of equal protection relating to persons convicted and under sentence and persons with a criminal record.
   (b) Indefinite confinement of an acquittee by reason of insanity solely on the authority of a rule of criminal procedure, violating the U.S. Constitution's guarantee of due process of law under the Fourteenth Amendment or violating the U.S. Constitution's guarantee of a republican form of government under Article IV, Section 4.

3. F.R.Cr.P. 3.460 does not violate any of the provisions of due process and equal protection under the U.S. Constitution, and specifically under the Fourteenth Amendment.

4. F.R.Cr.P. 3.460 is a rule of procedure and not of substantive law.

5. The construction given to F.R.Cr.P. 3.460 by the Florida Supreme Court is binding upon federal courts.

STATEMENT OF CASE

Respondent accepts the statement of case elaborated upon in the Petition and would add thereto:

1. A hearing was held pursuant to F.R.Cr.P. 3.460 wherein the reports of the psychiatrists were stipulated to by the defense and all due process safeguards required were adhered to and the defense did not object to any of the procedures involved. Said hearing was separate and apart from the trial of defendant Christina I. Connors and the Department of Health and Rehabilitative Services was nowhere to be found at the said hearing.

2. No contempt citation was ever issued against any individual involved in the case of Christina I. Connors.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. Petitioner lacks sufficient standing to present this matter before the Court.

Petitioner in this case is the Florida Department of Health and Rehabilitative Services, as is stated in the petition on page 8, and as such cannot satisfy the burden placed upon it to establish standing pursuant to cases beginning with *Flast* v *Cohen* 392 U.S. 83 20 L Ed 2d 947. In *Flast* supra p. 102 there was a requirement that there must be a logical nexus between the status asserted and the claim sought to be adjudicated. This nexus is two-pronged. First there must be established a logical link between status and the type of legislative enactment attacked, and secondly there must be established a nexus between that status and the precise nature of the constitutional infringement alleged.

The Department of Health and Rehabilitative Services challenges F.R.Cr.P. 3.460 because it does not provide the individual with the due process and equal protection requirements of the U.S. Constitution. Nowhere is it alleged that the petitioner's status is at all connected with the constitutional infringements alluded to in the petition.

Petitioner does not allege any injury in fact, but merely that this rule deals unfairly with individuals who are committed to the Department under F.R.Cr.P. 3.460. This is not enough, for this Court has held that a party seeking review must himself be among the injured. *Sierra Club* v *Morton*, 405 U.S. 727, p. 734 31 L Ed 2d 636 (1972). The Department of Health and Rehabilitative Services is in a similar position to that of the Sierra Club. It is merely asserting that a law is unconstitutional without alleging any injury to the Department directly by F.R.Cr.P. 3.460.

An analogous situation occurs when a private citizen wishes to have an individual criminally prosecuted because that individual injured the private citizen. In a case such as that the logical nexus under *Flast* supra does not exist for the third party. The private citizen is in the same position as the Department of Health and Rehabilitative Services. As a result of the enforcement of F.R.Cr.P. 3.460, the Department of Health and Rehabilitative Services is not the one being directly injured. In *Linda R. S.* v *Richard A.* 410 U.S. 614 p. 619, 93 S.Ct. 1146, 35 L.Ed. 2d 536 p. 541, this Court held

> The Court's prior decisions consistently hold that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution.

It has been said many times that the mere fact that a petition contains an allegation that a particular statute is unconstitutional does not in itself confer jurisdiction upon the Supreme Court, unless the legal rights of litigants are actually involved in

the controversy. Here the Department of Health and Rehabilitative Services is not involved in the controversy. F.R.Cr.P. 3.460 involves the commitment of an individual not directly associated with the Department. Being a State agency it must abide by the laws of the State and those laws of the State are interpreted by the State Supreme Court. Once that Supreme Court has settled the issue there no longer exists a controversy between State agencies, *Baker* v *Carr* 369 U.S., 186 and 82 S.Ct. 691 (1962).

Finally, this point is made in the dissent by Justice Hatchett *in re Connors* 332 So. 2d 336, (Fla. 1976 p. 346)

> . . . the majority loses sight of the particular case before us. Even though the trial court ruling applies specifically "to this defendant", and "other defendants in like circumstances" the majority makes no mention of the fact that neither Mrs. Connors nor any other criminal defendant is any longer a party to this cause. At no time has Mrs. Connors appealed from any order entered in the course of these proceedings. Dr. Cahoon was never adjudged in contempt, and the order to show cause directed to him was effectively dissolved by the order of December 20, 1974, which was entered of record three days later . . . . In no accepted sense, however, was the Division of Mental Health, itself an arm of the State government, a party defendant in Mrs. Connors' prosecution.

II. Petitioner has presented various issues which were not presented to the Supreme Court of Florida in the matter of *Christina I. Connors* supra, and, therefore, those issues should not be considered by this Court.

On page 3 of the Petition for Writ of Certiorari the issue of equal protection relating to persons convicted and under sentence and persons with a criminal record was not raised in any form by the petitioner in the lower court.

Petitioner's point 2 on page 4 of the petition:

> Does the indefinite confinement of an acquittee by reason of insanity, solely on the authority of a rule of criminal "procedure", violate the United States Constitution's guarantee to due process of "law" under the Fourteenth Amendment or violate the United States Constitution's guarantee of a republican form of government under Article IV, Section 4?

was not raised in the lower court in any manner, nor was it decided by the lower court.

This Court in *Street* v *New York*, 89 S.Ct 394, 1354 U.S. 576 (1969) held that the Court must consider whether or not a question was presented to the lower court in such a manner that it was necessarily decided by the lower court. If the question was not so presented the Court felt it could not consider it, p. 581-582. In addition, *Street* v *New York* supra held that whether or not the question was sufficient and properly raised in the state courts was itself a Federal question, p. 583. This principle has been restated many times: in *Fuller* v *Oregon*, 417 U.S. 40, 40 L. Ed 2d 642, 94 S.Ct. 2116 (1974); *Debacker* v *Brainard*, 396 U.S. 28, 90 S.Ct. 163 (1969); and *Monks* v *New Jersey*, 398 U.S. 71, 90 S.Ct. 1563 (1970).

The issues can therefore be narrowed by eliminating all reference to the comparison of Florida criminal rule of procedure 3.460 and the procedures used to confine persons convicted and under sentence and persons with criminal records.

As to Petitioner's second major contention that there is a violation of due process of law under the Fourteenth Amendment, the only such allegation presented to the State Supreme Court involving due process relates to petitioner's right to notice, a hearing, an opportunity to be heard, the right to counsel, the right to confront and cross examine witnesses, afford an opportunity to present evidence, grant periodic review, and the standards for commitment under the Baker Act versus the F.R.Cr.P. 3.460. Neither in the opinion *In re*

Christina I. Connors supra nor petitioner's brief to the lower court, is there any mention of Article V, Section 4 of the United States Constitution, nor any mention of a violation of our republican form of government.

III. F.R.Cr.P. 3.460 does not violate any of the provisions of due process and equal protection under the U.S. Constitution, specifically under the Fourteenth Amendment.

For the sake of orderly argument and to avoid a repetition respondent will combine both the due process and equal protection arguments presented by petitioner relying on the Fourteenth Amendment of the United States Constitution.

Petitioner initially argues the indefiniteness of the commitment of Christina Connors. Relying on the lack of specificity in the rule with regard to the availability of hearing for continued involuntary hospitalization, it is true that nowhere in the rule is it specified when a person committed under F.R.Cr.P. 3.460 shall have a right to periodic review, but such a specific requirement is not necessitated by the law as long as discretion is not abused.

In *Jackson* v *Indiana* 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed. 2d 435 (1972) petitioner argued that defendant's commitment was in essence a life sentence since it appeared that the defendant would never be competent to stand trial. The Court held that the commitment of Jackson was unconstitutional, but the reasons for this holding bear directly on the case before the court.

As in Florida, the Indiana Statute had no provision for periodic review. This in itself was not found to be defective. The Court compared 18 U.S.C. §4247 and §4248 to the Indiana Statute. What the Court found was a constitutional commitment procedure under the federal system providing for

the involuntary hospitalization of insane and mentally incompetent individuals who will probably endanger the safety of the officers, the property, or other interests of the United States. When one of the above conditions of commitment no longer applies, the individual is entitled to release. The key is the dangerousness of the individual. Under the Indiana Statute there was no requirement that the committed individual had to be dangerous, thereby creating the distinction which allowed the court to find the Indiana Statute unconstitutional. It should be noted that, as in Florida, 18 U.S.C. §4247 and §4248 does not contain specific hearing and notice requirements, but the Federal Statute is Constitutional because such provisions are inherent in the operation of any judicial procedure.

The Florida Supreme Court *In re Connors* supra p. 239 provided a standard for periodic reexamination by the State Courts under F.R.Cr.P. 3.460 setting up the limit for reexamination to be six months, and further provided that should the court not periodically reexamine and make a redetermination of a patient's *mental* condition that it would be appropriate to seek the available remedies under the laws of the State of Florida.

Therefore, indefinite confinement under the current State of Florida law is not possible, for once an individual is no longer dangerous or no longer insane he is to be released, *Jackson* v *Indiana* supra.

The next point raised by petitioner under the Fourteenth Amendment relates to a hearing prior to commitment and to the rights which accompany such a hearing. Respondent cannot argue with the various citations in the petition, for due process does require a hearing and those rights which accompany a hearing, *Morrissey* v *Brewer* 408 U.S. 471, 92 S.Ct. 2593 33 L.Ed 2d 484 (1972). In the case before the court the defendant was afforded a full hearing, was represented by counsel, was examined by competent psychiatrists, and the reports of the psychiatrists were stipulated to by the defense. Noticeably

lacking in petitioner's argument is any mention of a defense attorney objecting to the procedures of the trial court. Assumably the defense attorney found nothing objectionable about F.R.Cr.P. 3.460's application to his client. The Florida Supreme Court in *In re Connors*, supra and in *Powell* v *Genung*, 306 so. 2d 113 (Fla. 1974) held, in both instances, petitioner had a right to and received all Constitutional due process requisites. He was allowed to be confronted with the witnesses against him, to cross examine them, and to offer evidence of his own. The Florida Supreme Court therefore has spoken twice to the issue of due process and the hearing requirement and it is now a well established fact that in the State of Florida F.R.Cr.P. 3.460 provides all the Constitutional protections of due process pursuant to the Fourteenth Amendment of the United States Constitution.

The relation of equal protection to petitioner's argument falls mainly upon the burden of the civilly committed patient compared to the patient committed under F.R.Cr.P. 3.460. Petitioner maintains that F.R.Cr.P. 3.460 only requires a finding that the individual is manifestly dangerous, but not mentally ill. One need only read F.R.Cr.P. 3.460 to find that a person must be insane and dangerous. This position is further clarified in *In re Connors*, supra p. 328 where the Court clearly held that these provisions related to the individual strictly at the time of commitment and not to the time of the commission of the offense, and further *In re Connors* supra p. 339, when the Court refers to the reexamination and redetermination, it speaks of the individual's *mental* condition and should petitioner feel that insanity is not sufficient for mental illness one need only look to 18 U.S.C. §4247, or to the voluminous case law on the subject of insanity as an affirmative defense, cited in part in the petition.

Respondent concedes that Chapter 394 Florida Statutes and F.R.Cr.P. 3.460 are not word-for-word identical, but the burden

they put forth is equivalent. The compelling interest doctrine only applies when the burden is substantially unequal and not just where there is a minor difference in application or wording, *Williams* v *Rhodes* 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed. 2d 24 (1968); *Sayler Land Company* v *Tulare Lake Basin Water Storage District* 410 U.S. 719, 93 S.Ct. 1224, 35 L.Ed. 2d 659 (1973).

Petitioner speaks of prehearing custody, yet nowhere is prehearing custody mentioned in F.R.Cr.P. 3.460 nor *In re Connors* supra nor *Powell* v *Genung* supra, nor in petitioner's brief to the Florida Supreme Court. The issue does not exist, nor is it in conflict. The courts of Florida have held that to be committed under F.R.Cr.P. 3.460 requires a hearing with all the due process requirements which have heretofore been stated.

On page 19 of the petition it is stated that the rule as applied does not guarantee the acquittee minimum due process standards applicable to the states under the Fourteenth Amendment, yet nowhere in the petition is the actual application by the Florida trial courts to defendants ever discussed.

IV. F.R.Cr.P. 3.460 is a rule of procedure and not of substantive law.

The Florida Legislature in Section 394.467(5)(a) Florida Statutes:

> In the case of any patient who has been committed to a mental hospital pursuant to F.R.Cr.P. 3.460 (acquittal for a cause of insanity), Florida Rules of Criminal Procedure, committing court shall retain jurisdiction in the case.

The Florida Legislature has recognized that the courts of Florida retain jurisdiction over certain individuals and has given that jurisdiction to the courts, the conclusion here being that F.R.Cr.P. 3.460 should be the vehicle used by the courts to

commit defendants found not guilty by reason of insanity. Therefore in Florida the question as to whether or not the Legislature has the authority for commitment or whether or not the courts of Florida have the inherent right to enact a procedural rule for such commitment does not present a problem, for the Legislature has recognized the courts' authority and the courts have recognized their own authority in this area.

V. The construction given to a State Statute by the State Courts is binding upon the Federal Courts.

Respondent, during the course of this brief, has periodically relied upon the interpretations given to F.R.Cr.P. 3.460 by the Supreme Court of the State of Florida *In re Connors* supra *Powell* v *Genung* supra. The Supreme Court has stated many times that the

> Interpretation of state legislation is primarily the function of state authorities, judicial and administrative. The construction given to a state statute by the state courts is binding upon the federal courts.

Albertson v *Millard*, 345 U.S. 242, 73 S.Ct. 600, 97 L.Ed. 98 p. 985 (1953). *United States* v *Burnison*, 339 U.S. 87, 70 S.Ct. 503, 94 L.Ed. 675 (1950) deals with a California Statute interpreted by the California Supreme Court prior to being contested on Federal Constitutional grounds. The Supreme Court stated

> The construction of a California Code by the California Supreme Court is, of course, binding on us. (p. 89).

The provision which the California Supreme Court interpreted dealt with a testamentary gift to the United States Government. Had the California Supreme Court not interpreted the California Probate Code as restricting such gifts to the United States Government there would have been no appeal. For the point of appeal was

> . . . that the California Code, as interpreted, violates the Supremacy Clause of the Constitution, in that it infringes upon the "inherent sovereign power" of the United States to receive testamentary gifts. (p. 90)

In *Kingsley International Picture Corp.* v *Regents of the University of the State of New York*, 360 U.S. 684, 79 S.Ct. 1362 (1959) the Supreme Court was bound to follow the construction which was given a state statute by the highest court in New York.

> We accept, too, as we must, the construction of the New York Legislature's language which the Court of Appeals has put upon it. (p. 688)

In other decisions, words which on their face may be vague or broad have been defined by the state courts to such an extent that the definition has been sufficient to overcome constitutional attack, *Mishkin* v *State of New York* 383 U.S. 502, 86 S.Ct. 958, p. 962 (1966).

The above is a brief recital of a portion of the case law which allows this Court to use the interpretations placed upon a statute or, in this case a rule by the state courts, as a basis for a decision to determine the constitutional validity of said statute or rule.

CONCLUSION

It is respectfully submitted that the petition for writ of certiorari should be denied.

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APPENDIX

§4246. Procedure upon finding of mental incompetency.

Whenever the trial court shall determine in accordance with section 4244 and 4245 of this title that an accused is or was mentally incompetent, the court may commit the accused to the custody of the Attorney General or his authorized representative, until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law. And if the court after hearing as provided in the preceding sections 4244 and 4245 shall determine that the conditions specified in the following section 4247 exist, the commitment shall be governed by section 4248 as herein provided. (added Sept. 7, 1949, ch. 535 § 1, 63 Stat. 686.)

§4247. Alternate procedure on expiration of sentence.

Whenever the Director of the Bureau of Prisons shall certify that a prisoner whose sentence is about to expire has been examined by the board of examiners referred to in title 18, United States Code, section 4241, and that in the judgment of the Director and the board of examiners the prisoner is insane or mentally incompetent, and that if released he will probably endanger the safety of the officers, the property, or other interests of the United States and that suitable arrangements for the custody and care of the prisoner are not otherwise available, the Attorney General shall transmit the certificate to the clerk of the court for the district in which the prisoner is confined. Whereupon the court shall cause the prisoner to be examined by a qualified psychiatrist designated by the court and one selected by the prisoner, and shall, after notice, hold a hearing to determine whether the conditions specified above exist. At such hearing the designated psychiatrist or psychiatrists shall submit his or their reports, and the report of the board of examiners and other institutional records relating to the prisoner's mental condition shall be admissable in evidence. All of the psychiatrists and members of the board who have examined the prisoner may be called as witnesses, and be available for further questioning by the court and cross-examination by the prisoner or on behalf of the Government. At such hearing the court may in its discretion call any other witnesses for the prisoner. If upon such hearing the court shall determine that the conditions specified above exist, the court may commit the prisoner to the custody of the Attorney General, or his authorized representative. (added Sept. 7, 1949, ch. 535, § 1, 63 St. 686.)